United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: March 30, 2001

TO : James J. McDermott, Regional Director

Region 31

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Westwood One, Inc. d/b/a

Metro Networks Communications

Cases 14-CA-26040, 14-CA-26138, 2-CA-33151, 13-CA-38702, 31-CA-24622 and 31-CA-24638

This case was resubmitted for advice as to whether Region 31 (the "Region") should consolidate charges filed in Regions 2, 13, and 31 with a complaint in Region 14 alleging that the Employer failed to meet at reasonable times for collective bargaining purposes.

FACTS

In our March 9, 2001 memorandum to Regions 14 and 31, we concluded that Westwood One, Inc. (the "Employer") violated its duty to meet at reasonable times for collective bargaining purposes under Section 8(a)(5) with the American Federation of Television and Radio Artists' (the "Union") St. Louis (Clayton), Missouri unit by precipitously cancelling bargaining sessions, refusing to schedule more than two bargaining sessions per month, and insisting on scheduling only one bargaining session at a time. In reaching our conclusion, we rejected the Employer's "busy schedule" defense, specifically that its negotiator was bargaining with other units, precluding him from meeting more frequently with the St. Louis unit.

The Region also submitted agenda minutes from Regions 2, 13, and 31 analyzing allegations that the Employer failed to meet at reasonable times with the Union's bargaining units in New York City, Chicago, and Los Angeles, respectively. Thus, in our March 9, 2001 Advice Memorandum, we instructed the Region to hold the Region 14 complaint in abeyance until the Region submitted a recommendation as to proceeding on charges arising out of these additional units in light of the analysis contained in the memo.

ACTION

First, we agree with the Region's conclusion that it should dismiss, absent withdrawal, the charges filed with

Regions 13 and 31 on non-effectuation grounds. Although the facts presented in the agenda minutes indicate that the Employer may have engaged in bad faith bargaining by failing to meet at reasonable times, issuing complaint and litigating these charges would not effectuate the purposes of the Act because the Employer and respective bargaining units have entered into collective bargaining agreements. The fact that the parties have reached agreement, in turn, diminishes the impact of the limited bargaining sessions. Plus, as the Region notes, the Union has not alleged that the contracts ultimately produced by the collectivebargaining process were diminished by the arguable bad faith bargaining that occurred prior to their consummation. Still, in litigation, relevant information from these cases should be used in the consolidated complaint, discussed below, as background evidence of the Employer's pattern and practice of failing and refusing to meet at reasonable times.

Second, complaint should issue, absent settlement, in Case 2-CA-33151, and that case should be consolidated with the Region 14 complaint. In this regard, we note that the Employer and the Union's New York City bargaining unit have not yet reached agreement, and according to Region 2's agenda minutes, the Employer has engaged in conduct similar to the conduct exhibited in Region 14 with respect to its dilatory approach to bargaining. For example, Hillman, the Employer's negotiator, agrees to meet only twice per month and schedule one or two sessions at a time. Also, in response to the Union's requests for more frequent bargaining, the Employer invokes the "busy schedule" defense, maintaining that Hillman is bargaining at other locations where sister local units won elections.

[FOIA Exemption 5

].2

B.J.K.

].

¹ [FOIA Exemption 5

² See Postal Service, 303 NLRB 463 n.5 (1991); Albertson's, 300 NLRB 1013 n.2 (1990).